

**UNITED STATES DISTRICT COURT
IN THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JADE CLOTHING LLC,
a Michigan Limited Liability Company,

Plaintiff,

Case No. 1:16-cv-____-__

Hon. _____

v

JADE'S CLOSET LLC, a Pennsylvania
Limited Liability Company,

Defendant.

_____/

COMPLAINT FOR TRADE MARK INFRINGEMENT AND UNFAIR COMPETITION

Plaintiff, Jade Clothing LLC, by its counsel, Dickinson Wright PLLC, states as follows, for its complaint against Jade's Closet LLC:

JURISDICTION AND VENUE

1. This civil action asserts claims for trademark and service mark infringement and unfair competition arising under the Federal Trademark Act, 15 U.S.C. §1051 *et seq.*, the statutes of the State of Michigan, and the common law.

2. This Court has subject matter jurisdiction under Section 39 of the Federal Trademark Act, 15 U.S.C. §1121, and 28 U.S.C. §§1331, 1338 and 1367.

3. This Court has personal jurisdiction over Defendant because Defendant is a limited liability company of the State Pennsylvania doing business in Michigan, and this Judicial District, and has committed acts which have caused injury within this Judicial District.

4. Venue properly lies in this district under 28 U.S.C. §§ 1391, because the

Defendant resides in, and/or a substantial portion of the events giving rise to the claims herein, arose in this Judicial District.

PARTIES

5. Plaintiff Jade Clothing LLC (hereinafter "Plaintiff", "Jade Clothing" or "Plaintiff Jade Clothing") is a Michigan limited liability company having its principal offices at 55 Riverchase Drive, Rockford Michigan 49341. As alleged more fully below, Jade Clothing advertises, promotes and operates a retail clothing boutique located at 17 Squires Street Square NE, Rockford, Michigan 49341 that uses the name JADE in connection therewith; and operates a corresponding internet website, also using the name JADE, at the following Internet address: <www.jadeclothing.com>.

6. On information and belief, Defendant Jade's Closet LLC (hereinafter "Defendant," "Jade's Closet" or "Defendant Jade's Closet") is a Pennsylvania Limited Liability Company, doing business at 200 W Lancaster Ave, Wayne, PA 19087. As alleged more fully below, Defendant is engaged in the unauthorized and unfair use of the trademark and service mark JADE in connection with a retail clothing boutique, and an online retail clothing boutique, operating in this Judicial District, at the Internet address: <shopjadescloset.com>.

FACTS COMMON TO ALL CLAIMS

7. Plaintiff is the owner of the trade name, trademark and service mark JADE, Plaintiff having used said name and mark in interstate commerce, Michigan, and in this Judicial District in connection with the operation, advertisement and promotion of a retail clothing boutique since at least as early as October 2002.

8. Plaintiff owns United States Trademark Registration Number 3362219 that issued on January 1, 2008, for the trademark JADE, in connection with retail clothing boutique services. A true copy of Registration 3362219 is attached hereto as Exhibit A, and a certified copy of Registration 3362219 will be provided at a later date.

9. Plaintiff also owns the domain name <www.jadeclothing.com> and has been

using that domain name in connection with an internet website that advertises, promotes and renders Plaintiff's retail clothing boutique services since at least as early as March 2003. In excess of \$250,000 has been spent on the development of this web site, Plaintiff's JADE retail clothing boutique in Rockford, Michigan, and the advertising and promotion of that boutique and Plaintiff's services.

10. Plaintiff, has used the trade name, trademark and service mark JADE, alone and in combination with the word "Clothing" since at least as early as October of 2002. Examples of said use are shown below:

Plaintiff's Retail Store:



Plaintiff's Internet Website:



11. At some time subsequent to January 2008, Defendant Jade's Closet began using the name "JADE" in connection with a retail clothing boutique. And at some time subsequent to January 2008 Defendant Jade's Closet began using the name "JADE" in connection with retail clothing boutique services in the State of Michigan, and in connection with the website located at shopjadescloset.com. Examples of said use are shown below:

Defendant's Retail Store:



Defendant's Internet Website:



COUNT I
TRADE NAME, TRADEMARK AND SERVICE MARK INFRINGEMENT

12. Plaintiff incorporates by reference Paragraphs 1-11 of this Complaint as if set forth in full herein.

13. Plaintiff Jade Clothing is the owner of the inherently distinctive trade name, and federally registered trademark and service mark JADE, in connection with retail clothing boutique services.

14. As a result of significant advertising and promotion, and sales under and in connection with Plaintiff's JADE name and mark, and the maintenance of premium quality standards relating thereto, Plaintiff's JADE name and mark have become favorably known to the public and those seeking retail clothing boutique services, as a distinctive indication of origin of such retail clothing boutique services.

15. Notwithstanding Plaintiff's prior, registered rights in the JADE name and mark, at some time subsequent to January 2008 Defendant Jade's Closet opened and began advertising and promoting a retail clothing boutique, offering and rendering its retail clothing boutique services in Michigan under the name JADE. While Defendant's physical address is in Pennsylvania, Defendant's internet website located at the Internet address <shopjadescloset.com> (shown above) is accessible and functional in the State of Michigan.

16. Defendant registered and is using the domain name <shopjadescloset.com>

to promote Defendants' JADE retail clothing boutique via the Internet in the State of Michigan.

17. Defendants' JADE formative name is virtually identical in all respects to Plaintiff's JADE name, and Plaintiff's federally registered JADE trademark and service mark.

18. Upon information and belief, Defendant had actual, if not constructive, knowledge of Plaintiff's prior and distinctive JADE name, and registered JADE mark, and the extensive advertising and use thereof by Plaintiff, when Defendant chose and began using the virtually identical and confusingly similar name and mark JADE.

19. Plaintiff sent Defendants a cease and desist letter on March 8, 2016 objecting to Defendants' use of the trade name and trademark JADE, a copy of which is attached hereto as Exhibit B, but Defendants expressly have refused to cease such use.

20. Defendants' use of the name and mark JADE in the manner alleged herein is likely to confuse or deceive the purchasing public into believing, contrary to fact, that Defendants' business is Plaintiff's business, or that Defendants' business is sponsored, licensed or otherwise approved by, or is in some way connected or affiliated with, Plaintiff.

21. Defendants' use of the trade name and mark JADE infringes Plaintiff's JADE name, and Plaintiff's registered JADE mark, in violation of §32 and §43(a) of the Federal Trademark Act, 15 U.S.C. §§ 1114 and 1125(a), and at common law.

22. Defendants' trade name and trademark infringement has caused and, unless enjoined, will continue to cause Plaintiff immediate and irreparable injury, in an amount as yet not ascertainable, and for which it has no adequate remedy at law, entitling Plaintiff to injunctive relief under 15 U.S.C. § 1116 and Michigan common law .

COUNT II – FALSE ADVERTISING AND FALSE DESIGNATION OF ORIGIN

23. Plaintiff incorporates by reference Paragraphs 1-22 of this Complaint as if set forth in full herein.

24. Defendant, by use of the near identical and confusingly similar name and mark JADE in the manner alleged herein, has falsely advertised and misrepresented that Defendants' services emanate from the same source or origin as Plaintiff's services, and that Defendant's services have the sponsorship and/or approval of Plaintiff, which Defendants' services do not have, in violation of §43(a) of the Federal Trademark Act, 15 U.S.C. §1125(a), §445.903 of the Michigan Consumer Protection Act, and Plaintiff's rights at common law.

25. Defendants' false advertising and false representation, as aforesaid, has caused and, unless enjoined, will continue to cause Plaintiff immediate and irreparable injury, in an amount as yet not ascertainable, for which it has no adequate remedy at law, entitling Plaintiff to injunctive relief under 15 U.S.C. § 1116 and § 445.911 of the Michigan Consumer Protection Act, and under common law.

COUNT III – UNFAIR COMPETITION

26. Plaintiff incorporates by reference Paragraphs 1-25 of this Complaint as if set forth in full herein.

27. By reason of its trade name and service mark infringement, false advertising and false designation and misrepresentation of origin, as aforesaid, Defendants have committed unfair competition under Michigan common law.

28. Defendants' unfair competition has caused and, unless enjoined, will continue to cause Plaintiff immediate and irreparable injury, in an amount as yet not ascertainable, and for which it has no adequate remedy at law, entitling Plaintiff to injunctive relief, and other relief under Michigan common law.

WHEREFORE, Plaintiff respectfully prays the Court grant it the following relief:

29. Entry of judgment that:

- (a) Defendant have infringed the trade name and service mark JADE under §§ 32 and 43(a) of the Federal Trademark Act and at common law;

- (b) Defendants have committed false advertising and false designation and misrepresentation under §43(a) of the Federal Trademark Act, 15 U.S. §1125(a), §445.903 of the Michigan Consumer Protection Act, and at common law; and
- (c) Defendants have committed unfair competition under Michigan common law.

30. Defendant and each of its agents, employees, servants, attorneys, successors and assigns, and all others in privity or acting in concert therewith be permanently enjoined from:

- (a) Using the trademark, service mark, domain name, trade name, corporate name, fictitious business name JADE in connection with any retail clothing boutique services, or any similar services;
- (b) Using any trademark, service mark, domain name, trade name, corporate name, fictitious business name or other commercial indication of origin which consists of or incorporates the mark and trade name JADE or any other trademark, service mark, domain name, trade name, corporate name, fictitious business name or other commercial indication of origin that is confusingly similar to JADE, in connection with any retail clothing boutique services, or any similar services;
- (c) Using the domain name <shopjadescloset.com> and any other domain name that incorporates JADE, in connection with any retail clothing boutique services, or any similar services;
- (d) Using JADE, alone or in combination with other words, letters and/or symbols, in any manner which misleads, confuses or deceives or is likely to mislead, confuse or deceive the public; and

- (e) Competing unfairly with Plaintiff or otherwise injuring Plaintiff's business reputation in the manner complained of herein.

31. Defendant be mandatorily enjoined to transfer all rights, title and interest in the domain names <shopjadescloset.com> and/or any other JADE formative domain names within Defendant's control to Plaintiff.

32. Pursuant to § 36 of the Federal Trademark Act, 15 U.S.C. § 1118, Defendant be directed to deliver up for destruction all advertisements, promotional materials, labels, signs, prints, packages, wrappers, receptacles, uniforms, business cards, stationery and all other materials in the possession or under the control of Defendant bearing or including the domain names <shopjadescloset.com> and/or the trademark JADE or any other reproduction, counterfeit, copy or colorable imitation of the mark JADE and all plates, molds, matrices and any other means of making or duplicating the same to Plaintiff.

33. The Court award such other and further relief as it deems appropriate.

DICKINSON WRIGHT PLLC

Dated: May 16, 2016

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